

Article - Environment

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§5–509.

(a) (1) In this section the following words have the meanings indicated.

(2) “Asset owner” means the owner or person having control of a water infrastructure asset.

(3) “Association” means:

(i) A homeowners association, as defined in § 11B–101 of the Real Property Article;

(ii) A council of unit owners, as defined in § 11–101 of the Real Property Article; or

(iii) Any other entity owning or controlling a water infrastructure asset, the owners or members of which are owners of property adjacent to or benefited by the water infrastructure asset.

(4) “Association member” means an owner or a member of an association.

(5) “Water infrastructure asset” means a reservoir, a dam, or any other waterway construction.

(b) (1) On complaint or the Department’s own initiative, the Department may investigate or examine any water infrastructure asset.

(2) If the Department determines that the water infrastructure asset is unsafe, needs repair, or should be removed because the water infrastructure asset is unsafe and not repairable, the Department shall notify the asset owner in writing to repair or remove the water infrastructure asset, as the situation warrants.

(3) The repair or removal work shall be completed within a reasonable time, which time shall be prescribed in the Department’s notice.

(c) If the work is not completed in the time prescribed in the notice:

(1) The Department may have the work completed at the expense of the asset owner;

(2) The Department shall charge the asset owner for the costs to complete the work; and

(3) If repayment is not made within 30 days after written demand, the Department may bring an action in the proper court to recover the costs to complete the work.

(d) (1) The Department may take emergency actions necessary to protect life, property, or the environment if:

(i) 1. The Department determines that a water infrastructure asset is in imminent danger of failure; and

2. The asset owner has been issued a notice by the Department under subsection (b) of this section and has not completed the work in accordance with the time prescribed in the notice; or

(ii) The Department determines that:

1. A water infrastructure asset is failing; and

2. The asset owner is not taking adequate actions to protect life, property, or the environment.

(2) Emergency actions taken by the Department under this subsection may include:

(i) Taking control of the water infrastructure asset;

(ii) Lowering the level of water impounded by the water infrastructure asset by releasing the impounded water or by other means;

(iii) Completely releasing all water impounded by the water infrastructure asset;

(iv) Performing any necessary remedial or protective work at the site of the water infrastructure asset, including breaching the water infrastructure asset; and

(v) Taking any other steps the Department deems necessary to safeguard life, property, or the environment.

(3) The Department or its agents may enter any property, without prior notice to the owner of the property, if the entry is necessary to carry out emergency actions under this subsection.

(4) If the Department takes control of a water infrastructure asset under paragraph (2)(i) of this subsection, the Department shall remain in charge and control of the water infrastructure asset until the Department has determined that the water infrastructure asset has been rendered safe or the circumstances requiring the emergency actions have ceased.

(5) The Department may obtain equipment, personnel, and other resources for emergency actions taken under this subsection through any appropriate means, including emergency procurements under § 13–108 of the State Finance and Procurement Article.

(e) (1) Costs incurred by the Department under this section shall:

(i) Constitute a debt owed to the State; and

(ii) Be reimbursed to the Department by the asset owner.

(2) If any such cost remains unreimbursed 30 days after the Department makes a demand for reimbursement from the asset owner, the water infrastructure asset shall be subject to the establishment of a lien in accordance with this section for the payment of the unreimbursed amount.

(f) (1) With respect to costs incurred by the Department under this section relating to a water infrastructure asset for which an association is the asset owner, if any such cost remains unreimbursed 30 days after the Department makes a demand for reimbursement from the association, such costs shall be a debt to the State owed, and shall be reimbursed to the Department, by the association members, jointly and severally, notwithstanding any provision of law that would otherwise relieve the association members of such liability.

(2) If any such cost remains unreimbursed 30 days after the Department makes a demand for reimbursement from the association members, the lots, condominium units, or other property owned by the association members that is adjacent to or benefited by the water infrastructure asset shall be subject to the establishment of a lien in accordance with this section for the payment of the unreimbursed amount.

(g) (1) Any lien arising under subsections (e) and (f) of this section shall, to the extent not otherwise expressly prohibited by law, have priority over all other liens and encumbrances perfected after July 1, 2020, on the water infrastructure

asset, or the lots, condominium units, or other property owned by the association members that is adjacent to or benefited by the water infrastructure asset.

(2) The establishment and enforcement of liens arising under subsections (e) and (f) of this section shall be governed by the rules set forth in Title 12, Chapter 300 of the Maryland Rules.

(h) No action may be brought against the State, the Department, or their respective agents or employees for the recovery of damages caused by the partial or total failure of any water infrastructure asset, or the control or operation of any water infrastructure asset, on the ground that the State, the Department, or their respective agents or employees are liable by virtue of any of the following:

(1) The approval or permitting of the water infrastructure asset;

(2) The issuance or enforcement of orders relative to maintenance or operation of the water infrastructure asset;

(3) Control or regulation of the water infrastructure asset;

(4) Actions taken to protect against failure during an emergency, including any actions taken under this subsection;

(5) The use of design and construction criteria prepared, approved, or promulgated by the Department; or

(6) The failure to issue or enforce orders, to control or regulate water infrastructure assets, to take measures to protect against any failure thereof, or to take any emergency actions contemplated by this subsection.

(i) Nothing in this section, and no act or omission of the Department under this section, shall be construed to relieve an asset owner of:

(1) The legal duties, obligations, or liabilities incident to the ownership or operation of a water infrastructure asset; or

(2) Any liability for acts or omissions of the asset owner that cause injury or death to any person, damage to any property or the environment, or violation of any law, regulation, or permit, even if acts or omissions of the Department under this section could be deemed an intervening cause of such injury, death, damage, or violation.

(j) This section does not apply to farm ponds used for agricultural purposes.

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